



The only issues before the Board on this appeal are:

1. Did claimant prove he injured his back working for respondent?
2. Did claimant prove he provided respondent with timely notice of the alleged accidental injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes the August 15, 2005, Order for Compensation should be reversed.

Claimant alleges he injured his low back in mid-March 2005 while working as a registered nurse in respondent's health center. Claimant testified at the August 11, 2005, preliminary hearing that he initially felt a twinge in his back on March 15, 2005, when he got out of his bathtub. According to claimant, his back was not bothering him when he reported to work that evening but, instead, his back problems began that night at work. Claimant initially testified, in part:

Q. (Mr. Levy) And then during the first shift, then, on March 15th or 16, whatever, what caused your back to have a problem? What were you doing?

A. (Claimant) I was working with one CNA and we were taking and we had patients that we had to lift. We had to get 'em out of bed. Had to put 'em on the bedside commode. We had to put 'em back to bed. We had to clean 'em up, roll 'em over. We had to clean 'em up. Change their diapers, pull them up in bed where we have to get on both sides of the bed and pull them up in bed. That's what we were doing.<sup>2</sup>

Although the above would tend to indicate claimant injured his back due to repetitive lifting activities, claimant's later testimony indicated there was a particular patient that he lifted that precipitated his back pain.

Q. (Mr. Levy) Did your back start hurting before or after you lifted that patient?

A. (Claimant) It was after I lifted the patient.<sup>3</sup>

Claimant did not report his back problems or symptoms to respondent but, instead, worked the next night, which would have been the shift that began on March 16 and concluded March 17, 2005. According to claimant, his back was a lot worse that shift.

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<sup>2</sup> P.H. Trans. at 8.

<sup>3</sup> *Id.* at 16.

Consequently, claimant did not work his shift that would have commenced the evening of March 17 but, instead, telephoned respondent and reported that he was unable to walk and could hardly sit. Claimant acknowledges that he did not report that he had injured his back at work when he contacted respondent on March 17, 2005, or when he spoke with his supervisor on March 21, 2005. Conversely, respondent's records indicate claimant reported that he had injured his back while getting out of his bathtub.

Claimant did not request respondent to furnish any medical treatment but, instead, claimant advised he was going to see a Dr. Snodgrass. Claimant saw the doctor on March 22, 2005, and provided Dr. Snodgrass a history that he injured his low back while getting out of a bathtub.

Injured back early last week. 3/15/05 Having a lot of pain & worsening – Occurred ~~when~~ after taking a bath & getting out of tub. – (Lower right back)<sup>4</sup>

And when claimant saw a Bev Hall, CPTA, on April 8, 2005, Ms. Hall recorded a history that claimant could not relate his back pain to any specific incident. Ms. Hall noted, in part:

Patient reports he is a nurse and works nights at the hospital. States he was working the 16<sup>th</sup> and 17<sup>th</sup> of March, and began to experience back pain. Cannot relate the pain to any incident.<sup>5</sup>

But progress notes from Dr. Samuel M. Bourn dated April 18, 2005, indicate another version of how claimant's low back problems allegedly began. Those notes indicate claimant hurt his back while lifting a patient onto an x-ray table. Those notes read, in part:

Patient is a 55-year-old Caucasian male nurse who on 3/15/2005 was lifting a patient onto an x-ray table. When he lifted the patient up and twisted, he felt a sharp pain in his lower back.<sup>6</sup>

And according to the testimony presented by respondent's witnesses, claimant did not unequivocally relate his low back problems to his work until June 2005.

Based upon this record, claimant failed to prove he injured his back while working for respondent. Although it is apparent claimant contends the bathtub incident is not responsible for his present back problems, it is not clear whether claimant now contends

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<sup>4</sup> *Id.*, Resp. Ex. 1.

<sup>5</sup> *Id.*, Resp. Ex. 2.

<sup>6</sup> *Id.*, Cl. Ex. 2.

he injured his back in a series of mini-traumas while lifting various patients or whether he sustained a discernible event while cleaning a specific patient or helping a patient onto an x-ray table. Claimant now argues that the bathtub incident was innocuous. But initially claimant believed that incident was significant as he related his back problems to that event when he first notified respondent that he was unable to work. Further, claimant continued to believe his back problems were precipitated by the bathtub incident when he spoke with respondent's representatives in late April 2005 and indicated his back problems may have been caused by the bathtub incident or by his work activities.

In short, claimant has failed to prove he injured his back at work. In addition, claimant has failed to prove he provided respondent with timely notice of the accident or injury as required by the Workers Compensation Act.<sup>7</sup> This record indicates claimant did not advise respondent he had injured his back at work within 10 days of the alleged accidental injury. Instead, claimant represented that his back complaints were related to the bathtub incident at home. Moreover, the evidence fails to establish there was just cause to extend the time to report the alleged accidental injury to 75 days.

In light of the above findings, claimant's request for benefits should be denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>8</sup>

**WHEREFORE**, the Board reverses the August 15, 2005, Order for Compensation.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2005.

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BOARD MEMBER

c: Robert A. Levy, Attorney for Claimant  
Wade A. Dorothy, Attorney for Respondent and its Insurance Fund  
Pamela J. Fuller, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>7</sup> K.S.A. 44-520.

<sup>8</sup> K.S.A. 44-534a(a)(2).